

WRITTEN TESTIMONY OF

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BEFORE THE
COMMITTEE ON COMMERCE, SCIENCE AND
TRANSPORTATION
UNITED STATES SENATE

REGARDING THE
REAUTHORIZATION OF THE FEDERAL PIPELINE
SAFETY PROGRAM

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INTRODUCTION

Mr. Chairman and Members of the Committee, I am John Somerhalder, President of El Paso Energy's regulated pipelines. I am submitting this written testimony on behalf of El Paso Energy, the nation's largest natural gas pipeline operator.

El Paso Energy operates nearly 40,000 miles of natural gas pipelines that are regulated by the federal Department of Transportation. Our pipelines stretch from California to New England and from the Canadian border to the Gulf of Mexico. We operate in 25 states and bring natural gas to fuel American homes and businesses.

The natural gas pipeline transmission industry is a safe industry. By continuously monitoring and inspecting our pipelines, we work to ensure that transportation by pipeline is the safest mode of energy transportation. I appreciate the Chairman's recognition of this fact. Operating and maintaining a safe system is embedded in every aspect of our business. The benefits of developing and implementing safety programs are widely recognized within our industry and are at the core of what we do. We are continuously working to improve our record of safety – for like you, we believe one fatality is one too many. It is with this thought in mind that I can say that our interests are directly in line with what this Committee and the public at large are interested in – reliable delivery of natural gas through safe pipelines.

I now would like to comment on a number of areas in Chairman McCain's bill and the Administration's bill with which we have concerns.

NATIONAL TRANSPORTATION SAFETY BOARD RECOMMENDATIONS

Presently, the National Transportation Safety Board has a number of open recommendations to the Office of Pipeline Safety (OPS). This is recognized in S. 2438, the McCain bill. I agree that OPS should be required to respond to these recommendations in a timely manner, that any responses should be open to the public, and that the responses should be reported to Congress.

PIPELINE SYSTEM INTEGRITY

On November 18 and 19, 1999, the Office of Pipeline Safety held a public meeting to begin a pipeline system integrity rulemaking. To date that effort has resulted in a Notice of Proposed Rulemaking published on April 24, 2000, for the hazardous liquid operators with over 500 miles of pipeline. OPS has indicated they plan to issue a Notice of Proposed Rulemaking for natural gas in the fall. The Interstate Natural Gas Association of America (INGAA), which represents interstate natural gas pipelines including El Paso Energy, is working to have this rulemaking technically based. INGAA and El Paso Energy agree that this will permit the greatest possible chance of positively impacting natural gas pipeline safety. However, this task is difficult. The natural gas pipeline safety regulations are much more comprehensive than the hazardous liquid regulations, and I believe these regulations form a basis for the excellent safety record of the natural gas transmission pipeline industry. Unfortunately, we have been so effective that simple solutions to improve our safety record do not exist. It is our intent in this pipeline system integrity rulemaking to comprehensively analyze and propose to OPS a program providing the greatest opportunity for improvement to occur.

It is my recommendation that any legislation recognize the differences between natural gas and liquid pipelines, including the risks and consequences of an incident and the regulations already imposed on these pipelines. Since the legislative proposals before this Committee address the issue of pipeline integrity, I offer the following comments:

Under no circumstances should the hazardous liquid rule be applied to natural gas transmission pipelines. First, upon release, natural gas and hazardous liquids behave very differently. Natural gas, which is lighter than air, rises and rapidly dissipates, whereas a liquid, let's say oil, that is heavier than air, spills onto the ground causing a variety of environmental concerns. Second, the ability to utilize internal inspection devices to look for a wide variety of potential flaws is very different. Third, the ability to test a pipeline hydrostatically is very different—our reliable gas service would be curtailed where there is only one pipeline serving the public. Clearly a rule tailored to each pipeline product should be considered.

The required use of the “best achievable technology” is open-ended and a moving target with which pipeline operators would be required to comply. While in theory this language sounds laudable, it leads people to believe that there are one or two technologies that solve the problem of safety for the pipeline. Natural gas pipeline operators have a number of tools they use to ensure the safety of their systems. These range from non-technical items such as walking the pipeline to look for changes to soil or vegetation to more technical items such as cathodic protection (a small electric current) and smart pigs. Industry voluntarily has been investing in research to continue to pursue better technologies for more than fifty years. Use of “best achievable technology” is also a relative term, meaning someone determines what this is whether or not the technology is truly proven.

If Congress is concerned about OPS issuing a natural gas rule in a timely manner, I suggest that OPS be given a timeframe for issuing Final Rules. If those dates are not met, Congress should require OPS to prepare a report to Congress explaining why those dates were not met. Forcing the natural gas transmission pipeline industry to comply with a rule that is completely inappropriate for our product because OPS failed to act is nonsensical and would not, in the least, result in improved safety.

ENHANCED STATE OVERSIGHT

Interstate pipeline operators, like virtually all forms of interstate commerce, are under the jurisdiction of the federal government. For an operator like El Paso Energy, with operations in 25 states, this is an important pipeline safety issue. Consistency in the application of safety standards is paramount to pipeline safety.

If individual states were permitted to create and enforce their own safety standards, operators like El Paso Energy would be forced to approach pipeline safety in a piecemeal manner, rather than on a system-wide basis. If pipeline operators were forced to comply with individual state requirements, it would actually lessen safety across the entire system, because it would reduce needed resources going to those areas most in need of risk reduction. Permitting the states to dictate specific activities would reduce pipeline safety overall.

Avenues are already in place for states to supplement the federal program and address issues of local concern. Approximately 75 percent of the natural gas pipelines in the United States are local distribution systems, which supply natural gas to homes and businesses. All of these systems, as well as intrastate transmission pipelines, are subject to the safety oversight of the states. If a state has a specific concern regarding an interstate operator, the states can address that concern by bringing it to the attention of the federal Office of Pipeline Safety. States also have complete control over the various one-call centers, whose primary purpose is to provide a mechanism for underground utilities to be marked to prevent accidental excavation damage. Third party damage by excavation is the biggest cause of pipeline failures.

OPERATOR QUALIFICATION

On August 27, 1999, a Final Rule was published by the Office of Pipeline Safety which required

operators of pipelines to prepare an operator qualification plan and have the applicable operating personnel qualified within specific time frames. This rulemaking was based on an extensive cooperation and negotiation between the Office of Pipeline Safety, natural gas transmission and distribution pipelines, liquid pipelines, labor unions, state pipeline safety representatives, corrosion experts, emergency response agencies, federal safety agencies, and other affected parties. Operators diligently have been preparing their qualification plans for over a year to meet the rule deadlines. Moving these deadlines up, as some of the legislative proposals suggest, would place an undue burden on operators, would sabotage some of the benefits expected to be realized by the rulemaking, and would have no effect on safety. It would seem best to let the existing regulatory process work by allowing the Operator Qualification rule to reach fruition.

I also am concerned that some of the proposals require operator training rather than operator qualification. A one-size fits all training program is not appropriate for the different systems upon which operators work and the varied tasks that operators must perform. The parties to the negotiated rulemaking recognized these differences and, after much discussion and analysis, agreed to an operator qualification rule rather than a training rule. Such a rule allows operators the ability to best address the specific concerns of their systems. As such, El Paso Energy believes that any legislative proposal addressing operators should focus on qualifications, not training. Training is only one component used to assure that an operator is qualified.

PUBLIC EDUCATION AND COMMUNITY RIGHT-TO-KNOW

The existing natural gas pipeline safety regulations require operators to provide a variety of information to the public about the pipelines. This information includes maps, emergency response information, educational materials, and one-call or location information. However, even with these efforts, third party damage is still the leading cause of pipeline failures, and is believed to have contributed to the gasoline pipeline failure in Bellingham, Washington.

The Office of Pipeline Safety is in a unique position to disseminate facility location information to the public. Since they are a federal agency, it would appear that they could serve as an information clearinghouse for public right-to-know issues, as well as many other issues that concern the public about pipelines. OPS could utilize accepted forums for information dissemination such as their Internet homepage or the Internet-based National Pipeline Mapping System for location information.

IMPROVED DATA AND DATA AVAILABILITY

The interstate natural gas transmission pipeline industry has, in conjunction with the Office of Pipeline Safety, developed a new form for reporting incidents. This new form allows better analysis of incident trends and better determination of the actual causes of incidents. This effort is in line with the DOT Inspector General's report and the National Transportation Safety Board's recommendations and will result in greater pipeline safety.

The Office of Pipeline Safety has maintained records on pipeline incidents since the early 1970's. These records are available to the public on OPS' Internet homepage (<http://ops.dot.gov>) and are also available by contacting OPS.

Based on the aforementioned facts, it would not appear that a legislative effort to improve data or data availability would demonstrably improve what is currently being done.

TECHNOLOGY DEVELOPMENT

The natural gas transmission pipeline industry has been conducting independent research since the early 1950's through the Gas Research Institute (GRI) and Pipeline Research Council International (PRCI), among others. This research has led to many advances in pipeline safety and is a significant contributor to our outstanding safety record.

The bills state that the Office of Pipeline Safety should direct research attention to work that is ongoing by the industry. If OPS is to expand its role in pipeline research, I believe it would be prudent to have OPS direct the research funding to existing, proven research organizations such as those mentioned above. This would ensure that the research is performed in an efficient manner, that OPS funding is in partnership with industry funding for increased effectiveness, and that all affected parties would have input into the direction of the research efforts.

PENALTIES

Presently, the pipeline safety regulations permit penalties up to \$25,000 per incident per day up to a maximum of \$100,000. Both bills would increase the penalties to \$100,000 per incident per day up to a maximum of \$1,000,000. El Paso Energy complies with the pipeline safety regulations because they are the law and because we believe that in most cases they increase pipeline safety. El Paso Energy's goal is to increase pipeline safety, not avoid penalties. As such raising the penalty amounts for non-compliance would not result in El Paso Energy or our industry better complying with the regulations.

AUTHORIZATION OF APPROPRIATIONS

I believe it is important to note that part of the Administration's budget request for FY 2001 already has been authorized in TEA21. TEA21 authorized \$5 million in one-time grants to states that improved their one-call systems. In this authorization, Congress recognized that natural gas and liquid pipelines generate only about one-fifth of the calls made by one-call centers to mark underground facilities. As such, Congress required that any sums that are appropriated for state grants must be taken from general revenues, not from user fees.

The bills before the Committee do not break out what amounts should come from user fees, the Oil Spill Liability Fund, and the Pipeline Safety Reserve. El Paso Energy would be more than happy to work with the Committee on this issue.

CONCLUSION

I would like to conclude by thanking this Committee for allowing me the opportunity to provide this written testimony. I also would like to encourage this Committee to remember the outstanding safety record of the natural gas pipeline transmission industry and the many efforts natural gas pipeline operators already take to assure that we can reliably deliver natural gas to consumers in the safest manner possible. El Paso Energy appreciates your efforts to pass a balanced, constructive Pipeline Safety Act reauthorization and we look forward to working with you in making this legislation a reality.

SUMMARY OF THE WRITTEN TESTIMONY OF JOHN SOMERHALDER

The following is a summary of El Paso Energy Corporation's concerns with the proposed pipeline safety reauthorization legislation and our recommendations for change.

The OPS should be required to respond to the National Transportation Safety Board recommendations by a stipulated date.

Requiring natural gas pipelines to adopt the rule proposed for hazardous liquid pipelines -- which have characteristics inconsistent with natural gas -- is tantamount to punishing natural gas pipeline operators for situations outside of their control. OPS has indicated they plan to issue a Notice of Proposed Rulemaking for natural gas in the fall.

The federal preemption for interstate natural gas pipelines should be maintained.

The existing Operator Qualification rule should be allowed to mature and then be evaluated for effectiveness. If the desired effectiveness is not achieved, then action should be taken. No changes should be made at this time to the existing timetables or language.

The OPS should be established as an information clearinghouse for public right-to-know issues.

The OPS should be required to allocate all research funding to existing, established research and development organizations for pipeline safety technology development.

Compliance with pipeline safety regulations will not be improved by an increase in the penalty levels.

Any sums authorized for one-call centers should be derived from general revenues, not user fees.

The OPS should be required to complete all actions required by the 1992 and 1996 pipeline safety reauthorization acts prior to receiving any additional appropriations.